

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TROY A. MASON,

Petitioner,

v.

**WARDEN, NOBLE
CORRECTIONAL INSTITUTION,**

Respondent.

CASE NO. 2:19-CV-4695

JUDGE EDMUND A. SARGUS, JR.

MAGISTRATE JUDGE KIMBERLY A. JOLSON

OPINION AND ORDER

On July 14, 2020, the Magistrate Judge issued a Report and Recommendation recommending that the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed. (ECF No. 13.) Petitioner has filed an Objection to the Magistrate Judge's Report and Recommendation. (ECF No. 14.)

Petitioner challenges his convictions after a jury trial in the Muskingum County Court of Common Pleas on twenty-four counts of forgery and eight counts of tampering with records. The trial court imposed an aggregate term of twelve years' incarceration. He asserts that he was denied the effective assistance of counsel and denied due process because the jury convicted him on conduct broader than the charges set forth in the Indictment. The Magistrate Judge recommended dismissal of these claims as procedurally defaulted and without merit. Petitioner objects to those recommendations. Petitioner again argues that the Indictment only charged him with misdemeanor offenses, yet he was sentenced for felony crimes. He maintains that the prosecutor constructively amended the charges during closing argument and that his sentence violates the Eighth Amendment and is otherwise constitutionally offensive. Petitioner raises the same arguments he previously presented.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a de novo review. For the reasons already detailed in the Magistrate Judge’s Report and Recommendation, Petitioner’s Objection (ECF No. 14) is **OVERRULED**. The Report and Recommendation (ECF No. 13) is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

The Court **DECLINES** to issue a certificate of appealability.

Pursuant to Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, the Court now considers whether to issue a certificate of appealability. “In contrast to an ordinary civil litigant, a state prisoner who seeks a writ of habeas corpus in federal court holds no automatic right to appeal from an adverse decision by a district court.” *Jordan v. Fisher*, —U.S. ——. —, 135 S.Ct. 2647, 2650 (2015); 28 U.S.C. § 2253(c)(1) (requiring a habeas petitioner to obtain a certificate of appealability in order to appeal).

When a claim has been denied on the merits, a certificate of appealability may issue only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make a substantial showing of the denial of a constitutional right, a petitioner must show “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, n.4 (1983)). When a claim has been denied on procedural grounds, a certificate of appealability may issue if the petitioner establishes that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Id.*

The Court is not persuaded that reasonable jurists would debate the dismissal of Petitioner's claims. The Court therefore **DECLINES** to issue a certificate of appealability.

The Court certifies that the appeal would not be in good faith and that an application to proceed *in forma pauperis* on appeal should be **DENIED**.

IT IS SO ORDERED.

s/Edmund A. Sargus, Jr. 9/10/2020
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE